UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

MARLENE PUDIM,	:	
Plaintiff,	:	
	:	CIVIL NO. 3:04CV1579(PCD)
v.	:	
	:	
CATHY G. COLELLA,	:	
MARYANNE, MASCOLO,	:	
THOMAS J. PETRUNY and	:	
SEYMOUR BOARD OF EDUCATION	:	
Defendants.	:	NOVEMBER 22, 2004

RULING ON DEFENDANT'S MOTION TO DISMISS PURSUANT TO FEDERAL RULES OF CIVIL PROCEDURE 12(b)(6).

Pursuant to Fed. R. Civ. P. 12(b)(6), Defendants move to dismiss Count One of the Complaint, alleging intentional infliction of emotional distress. For the reasons stated herein, Defendant's Motion to Dismiss [Doc. No. 8] is **denied**.

I. BACKGROUND

At all times relevant to this Ruling, Plaintiff was a tenured elementary school teacher employed by the Seymour Board of Education and was also the building representative at Bungay School for the local teachers' union.

In her complaint, Plaintiff alleges that in 2002, while off work on long-term sick leave, the Defendants[1] intentionally subjected her to a "hostile and oppressive working environment to which no person of ordinary sensibilities could endure." Comp. ¶ 18. Specifically, she was

[1]Colella was the Principal of Bungay School and Plaintiff's immediate supervisor, Mascolo was the Assistant Superintendent of the Seymour Public Schools in Seymour, Petruny was the Seymour Superintendent of Schools, and the Seymour Board of Education was a government entity in charge of the Seymour Public Schools.

ordered by Defendants to "complete correction of materials and evaluations of students." Id. at ¶ 11. Plaintiff was banned from Bungay School while on leave and was the only teacher placed on the "Seymour Assistance Plan", a program designed to end in the termination of a tenured teacher, from 2002-2004. Id. at ¶ 13, 14. Other teachers employed by the Seymour Board of Education were issued written notification of Plaintiff's placement in this plan. Id. at ¶ 15.

During this period, Defendants required Plaintiff to: "complete lesson plans for the following school week in block form and to submit them to Defendant Colella, complete two comprehensive lesson plans per day in a format which identified and described all areas of lesson design, submit ten lesson plans in the aforesaid format for weekly redetermination by the Defendants so that the Plaintiff would have no more than four days within which to complete such work, complete a daily reflection for all lessons to be submitted daily, and perform all of this work in a handwritten format although the Defendants well knew that the Plaintiff suffered from a physical disability of one hand which prevented her from doing so". Id. at ¶ 17A-E. No other teachers were required to perform these tasks. These actions forced Plaintiff to resign her position at the end of the 2003-2004 school year and obtain employment elsewhere at a substantial reduction in salary. Id. at ¶ 19.

II. STANDARD

A motion to dismiss should be granted only when "it appears beyond doubt" that a plaintiff fails to state any claim upon which relief may be granted. Fed.R.Civ.P. 12(b)(6); Conley v. Gibson, 355 U.S. 41, 45, 78 S.Ct. 99, 2 L.Ed.2d 80 (1957). The function of a motion to dismiss is "merely to assess the legal feasibility of the complaint, not to assay the weight of the evidence which might be offered in support thereof." Ryder Energy Distribution v. Merrill

Lynch Commodities, Inc., 748 F.2d 774, 779 (2d Cir. 1984). In deciding a motion to dismiss under Rule 12(b)(6), the court assumes that all the allegations in the complaint are true and reads the complaint in "the light most favorable to the non-moving party." H.J. Inc. v. Northwest Bell Telephone Co., 492 U.S. 229, 249, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989).

III. DISCUSSION

Under Connecticut law, intentional infliction of emotional distress consists of four elements: "(1) that [Defendant] intended to inflict emotional distress; or that he knew or should have known that emotional distress was a likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe." Appleton v. Bd. of Educ., 254 Conn. 205, 210 (2000). Liability for intentional infliction of emotional distress requires conduct "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency" such that "recitation of the facts to an average member of the community would arouse his resentment against the actor, and lead him to exclaim, 'Outrageous!' " Id. at 210-211, see also Petyan v. Ellis, 200 Conn. 243, 253 (1986) (stating there is liability for conduct exceeding all bounds usually tolerated by decent society which is especially calculated to cause mental distress of a very serious kind). Determination of "whether a defendant's conduct is sufficient to satisfy the requirement that it be extreme and outrageous is initially a question for the court to determine." Appleton, 254 Conn. at 210. "Only where reasonable minds can differ does it become an issue for the jury." Mellaly v. Eastman Kodak Co., 42 Conn.Supp. 17, 20, 597 A.2d 846 (1991). Conduct on the part of the defendant that is merely insulting or displays bad manners or results in hurt feelings is insufficient to form the

basis for an action based upon intentional infliction of emotional distress. Id. at 211.

Plaintiff claims that "many courts... have held facts no more offensive than those alleged here to be sufficiently 'extreme and outrageous' to meet that element of the wrong." (Pl. Mem. Opp. Mot. to Dismiss 5). She offers numerous authority to support this claim. For example, courts have sustained claims of intentional infliction of emotional distress where defendants repeatedly lost their temper and used profanity and/or where the plaintiff was subjected to acts of racial discrimination or sexual harassment See Benton v. Simpson, 78 Conn.App. 746, 749, 829 A.2d 68 (2003) (alleging defendant manager lost temper six to nine times, used profanity, and banged on filing cabinet); Mellaly v. Eastman Kodak Co., 42 Conn.Supp. 17, 20, 597 A.2d 846 (1991) (alleging that defendant taunted and harassed plaintiff about his alcoholism); Grossman v. Computer Curriculum Corp., 131 F.Supp.2d 299, 310 (D.Conn. 2000) (alleging defendant severely harassed and mistreated plaintiff); Caesar v. Hartford Hospital, 46 F.Supp.2d 174, 180 (D.Conn. 1999) (allegations of discrimination and false reports made for the malicious purpose of retaliation); Nance v. M.D. Health Plan, Inc., 47 F.Supp.2d 276, 278 (D.Conn. 1999) (revealing sexual harassment allegations to subordinate and questioning subordinate about plaintiff's sexual orientation). Courts have also held alleged conduct, involving false complaints or statements regarding plaintiff's job performance by a defendant supervisor, as extreme and outrageous. See Talit v. Peterson, 44 Conn.Supp. 490, 498, 692 A.2d 1322 (1995) (alleging defendants caused her to lose her employment in retaliation for filing a grievance); Decampos v. Kennedy Center Inc., No. CV89 0260290 S, 1990 WL 264687, *3 (Conn.Super. 1990) (alleging defendant intentionally made false statements about her job performance with malice).

In the workplace, individuals "should expect to experience some level of emotional

distress, even significant emotional distress...." Perodeau v. City of Hartford, 259 Conn. 729, 757, 792 A.2d 752 (Conn. 2002). Requiring Plaintiff to submit lesson plans and daily reflections, and to correct and evaluate student work while out on long term sick leave, although potentially excessive and uncalled for, was not so atrocious as to exceed all bounds usually tolerated by decent society. In Dollard, the Appellate Court of Connecticut upheld the trial court's granting of a motion to strike claim for negligent infliction of emotional distress because allegations that defendants[2] engaged in a concerted plan and effort to force the plaintiff[3] to resign her employment by "hypercritically examining every small detail of plaintiff's professional and personal conduct" and by placing her under intensive supervision were not extreme and outrageous. Dollard v. Board of Education of the Town of Orange, 63 Conn.App. 550, 552 (2001). The fact that Plaintiff was banned from the school and placed on an assistance plan during this time is also neither extreme nor outrageous.

However, Plaintiff alleges that she was required to perform "all of this work in a handwritten format" when Defendants knew that she suffered from a physical disability which prevented her from doing so and where no other teachers employed by the Seymour Board of Education were subject to such requirements. Comp. ¶ 17, 17(E). Defendant does not address this circumstance other than to highlight that "Plaintiff suffered from physical disability of [only] one hand." Def. Mem. Sup. Mot. to Dismiss 11. Defendants have provided no explanation for this alleged singling out. Assuming that this requirement was more than a mere annoyance or

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[2] Defendants were the board of education, the director of special services, the principal, and the superintendent of schools. Dollard, 63 Conn.App. 553.

[3] Plaintiff was employed as a school psychologist by the defendant board of education. Id. at 552.

inconvenience for Plaintiff, reasonable minds could differ regarding the issue of whether the allegation set forth above, if true, rises to the level of extreme and outrageous. While the District Court of Connecticut has held that the failure to accommodate a disability does not "rise to the level exceeding all bounds usually tolerated by decent society," even where accommodations had been made for other employees, this Defendants' actions do not constitute a mere failure to accommodate. Armstead v. The Stop & Shop Companies, Inc., No. 3:01 CV 1489 (JBA), 2003 WL 1343245, *5 (D.Conn. 2003). Viewed in the light most favorable to the Plaintiff, Defendants' requirement that Plaintiff's work be handwritten was new and unique compared to those imposed upon other teachers employed by the Seymour Board of Education and rather than failing to accommodate Plaintiff's disability, Defendant created a unique situation to exploit it. If Plaintiff can prove these claims, she may be entitled to recover.

IV. CONCLUSION

For the reasons stated herein, Defendant's Motion to Dismiss the claim of intentional infliction of emotional distress pursuant to Federal Rules of Civil Procedure 12(b)(6) [Doc. No. 8] is **denied**.

SO ORDERED

Dated at New Haven, Connecticut, November____, 2004.

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Peter C. Dorsey
United States District Judge